

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2022-165**

January 25, 2023

VIA ELECTRONIC MAIL ONLY

Fritz Mulhauser

RE: FOIA Appeal 2022-165

Dear Mr. Mulhauser:

This letter responds to the administrative appeal that you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code §§ 2-531, *et seq.* (“DC FOIA”). In your appeal, you have challenged the lack of response of the Metropolitan Police Department (“MPD”) to your DC FOIA request.

On December 2, 2021, you submitted a DC FOIA request to MPD, identified as 2022-FOIA-01683, which sought the following:

This request is for any record concerning the agency’s use of outside public relations or messaging consultant assistance with explaining police policy or actions.

Generally, please provide records of any solicitation for, and any engagement with, contract assistance with public information messages. Responsive records could include (but not be limited to) statements of work, requests for proposals, bids or proposals, executed agreements to purchase services, memos or emails or exchanges of any kind on specific engagements, products delivered and agency evaluative analyses of products and their effects on audiences.

Offices with responsive records could include police chief, public information, general counsel, strategic engagement, grants and procurement.

Specifically, please provide:

1. Records that are related to any contract for public information and message development work by Cole Pro Media or any other firm with similar offerings. (Background on Cole is [here](#).)

Contract-related records include

- basic price and any per-unit fees;

- specified deliverables such as texts, video, training, consultation, help-desk, or other reports;
 - response-time requirements; and
 - all other terms.
- Also, any invoices for work done under any such contract(s).
2. Records that are notice to agency staff of the engagement of this capability and how to request it (what purposes, time frame, cost aspects).
 3. Records of specific engagements of any such contractor initiated by MPD.
 4. Records that are content delivered (speeches, talking points, testimony drafts, video narratives, or other consultant product for MPD to adopt or adapt in explaining its policies or actions). [and]
 5. Records that are evaluations or analyses of the contractor's work (that is, showing MPD officials' reactions to products or reporting on public response to a given messaging activity).

No personally identifiable information is requested. Such items should be redacted and the non-exempt material released.

Date range for search 01/01/19 to 12/01/21.

When MPD did not respond, you filed an appeal with this Office on June 9, 2022. On June 13, 2022, we notified MPD of your appeal and requested a response. While this Office did not receive a response, a review of the District's FOIA-tracking data indicates MPD continues to process the request.

It is the public policy of the District of Columbia that all persons are entitled to full and complete information regarding the affairs of the District government and the official acts of those who represent them as public officials and employees. D.C. Code § 2-531. The ultimate responsibility for responding to requests for records of an agency is vested in the agency head. 1 DCMR § 400.1

Under 1 DCMR § 405.1 when no decision can be dispatched within the applicable time limits, an agency shall nevertheless continue to process the request and inform the requester of the reason for delay, the date on which a determination may be expected; and the right to treat the delay as a denial and the right to appeal. Under D.C. Code § 2-532(e), a constructive denial occurs when an agency fails to respond within the timing requirements established in D.C. Code §§ 2-532(c) and (d).

Based on the record before us, we remand this matter back to MPD to comply with 1 DCMR § 405.1, if it has not already done so, with the objective of producing any non-exempt records

that are responsive to your request as soon as practical.

This constitutes the final decision of this Office. However, you are free to challenge any substantive response you receive from MPD with this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in Superior Court in accordance with DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Brandy Reaves, MPD FOIA Officer (via email only)